

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE POULOS,

Defendant and Appellant.

B288094

(Los Angeles County
Super. Ct. No. YA052813)

APPEAL from a judgment of the Superior Court of Los Angeles County, Thomas Sokolo, Judge. Reversed and remanded.

Caneel C. Fraser, under appointment by the Court of Appeal for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and Viet H. Nguyen, Deputy Attorney General, for Plaintiff and Respondent.

Michelle Poulos appeals from the denial of her motion to strike a sentence pursuant to Penal Code section 1473.7. The Attorney General concedes that the trial court erred, and urges remand. We reverse and remand.

FACTUAL AND PROCEDURAL HISTORY

In September 2002, Appellant Poulos entered a plea to a violation of Health and Safety Code section 11377, subdivision (a). At that time, she was on probation, with a two-year suspended sentence, for a 2001 conviction of Penal Code section 422, which was a strike prior. (Pen. Code, §§ 1170.12, subds. (a)-(d) and 667 (b)-(i).)¹ The trial court denied probation and sentenced Poulos to the middle term of two years, to run concurrent with her two-year term for the prior conviction. The court recommended commitment to a state prison facility with a drug treatment program.

In 2017, the court found Poulos factually innocent on the strike prior, and vacated that conviction. Later that year, Poulos moved to vacate the judgment in the 2002 conviction under Penal Code sections 1473.7 and 1385. She argued that, because her prior conviction had been vacated on the ground of actual innocence, she was entitled to relief on the later conviction under section 1473.7, subdivision (a)(2). That statute provides: “(a) A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence for either of the following reasons: (a)(2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.”

¹ All further statutory citations are to the Penal Code.

Poulos asserted that, had she not suffered the prior strike conviction that was vacated, she would have been eligible to participate in programs under either section 1000 or 1210; neither would have resulted in a period of incarceration, and each would have permitted dismissal of the charges after successful treatment of a drug program. Poulos further argued that, because she had completed a drug treatment program while she was incarcerated, she should also be eligible for dismissal of the second conviction under section 1385.

The People opposed her petition, arguing that she was ineligible unless she could demonstrate actual innocence on the 2002 conviction. The trial court heard argument, and denied the motion on December 1, 2017. Poulos appeals.²

DISCUSSION

In hearing the motion, the trial court took judicial notice of the prior finding of factual innocence. Counsel argued that the motion sought two areas of relief: first, to vacate the sentence on the drug conviction because of the showing of factual innocence on the strike prior, and second, to vacate the conviction and dismiss in the interests of justice because Poulos would have been able to earn a dismissal but for the strike prior. The trial court acknowledged that Poulos would not have received the sentence she is now challenging but for the prior conviction, but believed that the statute required her to show actual innocence on the conviction for which she was seeking relief. The court denied the motion on that ground.

² After briefing was completed in this matter, both parties waived oral argument and agreed to immediate submission of the matter for decision.

On appeal, Poulos argues that section 1473.7 specifically permits relief on either a conviction or a sentence, quoting the statutory language. She asserts that, as a result, the trial court could grant relief, in the interests of justice, as to a sentence alone without a showing of actual innocence on the underlying conviction. Respondent concedes that this reading is consistent with the language of the statute, and we agree. Had the Legislature intended that relief be limited solely to those cases in which the entire judgment could be vacated, it would have said so. The plain language of the statute, however, is to the contrary.

Respondent and appellant both seek remand of the case, so that the trial court can consider whether the relief requested would be in the interest of justice in this case. We agree, and remand accordingly.

DISPOSITION

The order is reversed, and the matter remanded for further proceedings to consider the relief requested pursuant to sections 1473.7 and 1385.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.